

REMARKS

This paper is filed in response to the Final Office Action Mailed March 12, 2010.

Claims 1, 3-4, 9-15, 18-24 are pending. Claims 1, 3-4, 9-10, 12, 15, 18 and 20 are previously presented. Claims 11, 13, 14 and 19 are original. Claims 2, 5-8, and 16-17 have been cancelled. Claims 21-24 are newly presented. Therefore claims 1, 3-4, 9-15, 18-24 submitted herewith for reconsideration:

Basis for amendment

New claims 21-24 correspond to claims 5, 8, 16 and 17 as originally presented, which were subsequently cancelled. Therefore, no new matter has been added.

Finality of the Rejection

The instant rejection is a first action on the merits after filing of an RCE. The claims were amended to provide more general and more appropriate wording in response to a discussion with the Examiner that occurred during the in-person interview on 11 January 2010. In particular, the amendments were merited by the potential ante-dating of Wright by the invention as discussed in the interview on the basis of presently submitted Exhibit 3. Applicants submit that these claims were therefore not earlier presented. Applicants question whether the spirit of the rule on finality in a first action is in line with the sequence of events in this application. MPEP §706.07(b).

Moreover, Applicants previously submit evidence (*inter alia* a movie) which was not entered into the record, and submit that, by making the present rejection final, Applicants do not have the chance to adhere to the Examiner's request for a physical copy of the movie previously cited.

Applicants have provided the concurrently submitted §1.131 declaration containing exhibits including the movie, now in CD readable format. In order for these to be considered, Applicants are now forced to file another RCE. However, should the Examiner withdraw the finality of the case, or better yet, issue a notice of allowance in this case, then the administrative burden and costs associated with filing an RCE may be avoided. Should the Examiner require any further information, documentation, or evidence to assist the Examiner is moving towards allowance, Applicants respectfully request that the Examiner contact the undersigned.

Rejection of claims 1, 3, 4, 9 – 15, 18 - 20

Claims 1, 3-4, 10, 12-15 and 18-20 stand rejected under 35 U.S.C. §103(a) over Wright (US 6823634) in view of Univerferth (US 2157038).

Applicants submit concurrently herewith a 37 C.F.R. §1.131 declaration which antedates the Wright reference. *See* 37 C.F.R. §1.131 declaration signed by Bjorn Oddvar Borresen, Lukas Zyznowski and Jan Cato Olsen on May 28, 2010. The declaration makes clear that the claimed invention was conceived and reduced to practice before November 07, 2002, the filing date of Wright. As such, Wright can no longer be viewed as a prior art reference.

Further, the §1.131 declaration, exhibits 7 and 8 refer to the previously cited movie. Applicants request that these exhibits, as well as exhibits 1-6 be made of record in this application.

The remaining reference, the Univerferth reference, alone or in combination with the other references of record or general knowledge, is insufficient to provide a proper rejection over the claimed invention. As such, the §103 rejection has been rendered moot, is now no longer proper and should be withdrawn.

Extension of Time

Any extension of time that may be deemed necessary to further the prosecution of this application is hereby requested.

Authorization to Charge Fees

The Commissioner is authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 08-3038, referencing the docket number shown above.

Authorization to Communicate via email

Pursuant to MPEP 502.03, authorization is hereby given to the USPTO to communicate with Applicant's representative concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file. Applicant's representative, Coraline Haitjema, can be reached at email address haitjemac@howrey.com.

Should any further issues remain, the Examiner is respectfully requested to contact the undersigned by telephone at the number given below or by email to haitjemac@howrey.com in order to schedule a telephone interview.

Respectfully submitted,



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